



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[WC Docket Nos. 13-97, 07-243, 20-67; IB Docket No. 16-155; FCC 23-75; FR ID 181538]

### Numbering Policies for Modern Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes rules regarding direct access to numbers by providers of interconnected Voice over Internet Protocol (VoIP) services. The Commission takes this action in furtherance of Congress' directive in the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to examine ways to reduce access to telephone numbers by potential perpetrators of illegal robocalls. These proposals aim to safeguard U.S. numbering resources and consumers, protect national security interests, promote public safety, and reduce opportunities for regulatory arbitrage.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and reply comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by WC Docket No. 13-97, by any of the following methods:

- Federal Communications Commission's Web Site: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Wireline Competition Bureau, Competition Policy Division, Mason Shefa, at (202) 418-2494, [mason.shefa@fcc.gov](mailto:mason.shefa@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Nicole Ongele, [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* (Second Further Notice) in WC Docket Nos. 13-97, 07-243, 20-67, and IB Docket No. 16-155, adopted on September 21, 2023, and released on September 22, 2023. The document is available for download at <https://docs.fcc.gov/public/attachments/FCC-23-75A1.pdf>. To request materials in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

*Providing Accountability Through Transparency Act:* The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking is available at <https://www.fcc.gov/proposed-rulemakings>.

**Initial Paperwork Reduction Act of 1995 Analysis:** This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this

document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

*See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

The proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the

presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

This document may contain potential new or revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## **SYNOPSIS**

1. In this *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from bad actors that access numbering resources indirectly by holding their direct access authorization holder “partners” accountable for their actions.

## **SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

2. By this *Second Further Notice*, we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from entities that access numbering resources indirectly by holding their direct access authorization holder “partners” accountable for their actions.

### **Updating the Duties of Existing Authorization Holders**

3. Part III.A of the *Second Report and Order* focuses on new applications for direct access to numbering resources. In the *VoIP Direct Access Further Notice*, 86 FR 51081 (Sept. 14, 2021), however, the Commission also asked whether some of the proposed new requirements should also apply to existing authorization holders (i.e., interconnected VoIP providers that were granted direct access authorization prior to the effective date of this Report and Order and revised rules). In particular, the Commission asked about requiring such existing authorization holders to certify compliance with E911 and CALEA obligations; to certify they are not subject to a Commission, law enforcement or regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission’s rules applicable to unlawful robocalls or unlawful spoofing; and to abide by state numbering requirements and other applicable requirements for businesses operating in the state. There were very limited comments on this issue. Further, the *VoIP Direct Access Further Notice* did not ask about applying other proposed new requirements, also adopted here, to existing interconnected VoIP direct access authorization holders.

4. Given the limited record in response to the *VoIP Direct Access Further Notice*, 86 FR 51081 (Sept. 14, 2021), about the applicability of these proposed requirements to existing authorization

holders, and in order to allow the Commission to address at one time whether all of the new requirements adopted in the *Second Report and Order* should apply to existing authorization holders, we propose that the new or revised certification, acknowledgment, and disclosure obligations set forth in Part III.A of the *Second Report and Order* should likewise apply to existing interconnected VoIP authorization holders. Specifically, we propose to require existing interconnected VoIP direct access authorization holders to provide the certifications, acknowledgments, and disclosures required by the following sections in Appendix A hereto, specifically § 52.15(g)(3)(ii)(B) through (F), (I), (K) through (L), (N), and (x)(A), within 30 days after the effective date of an order adopting such rules for existing authorization holders. We seek comment on this proposal.

5. The rationales for imposing each of these certification, acknowledgment, and disclosure obligations on future authorization holders, discussed in detail above, apply equally to existing interconnected VoIP direct access authorization holders. Obtaining this information from existing authorization holders would help the Bureau more effectively oversee the universe of direct access authorization holders by better enabling it to identify bad actors and preserve scarce numbering resources, while also balancing the obligations evenly for all authorization holders. Similarly, we propose to use the new information we require existing authorization holders to submit to determine whether a revocation of authorization, inability to obtain additional numbers, reclamation of unassigned numbers, or enforcement action may be warranted, just as if the information had been provided as part of a new application or an update or correction to their original application. We seek comment on this proposal.

6. With respect to these proposed requirements, we believe a 30 day deadline appropriately balances the strong public interest of the Bureau receiving this information against the burdens we anticipate these requirements may place on existing authorization holders, and seek comment on this conclusion. Do commenters agree that this deadline would strike the right regulatory balance? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information impose an undue burden that would outweigh the potential benefits? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information be necessary or appropriate to avoid asymmetrical regulation among interconnected VoIP providers? Alternatively, is this step necessary to narrow the gap in our oversight ability to reach

potential bad actors with respect to numbering resources? Would declining to apply the new requirements to existing authorization holders place the Commission at a disadvantage in terms of investigating those authorization holders and enforcing the rules that apply to them? Would relying on Commission enforcement actions against existing authorization holders be as effective as the proposed new requirements in combating unlawful robocalling and addressing the concerns raised regarding foreign ownership of entities with access to numbering resources pertaining to the United States? Are there any legal barriers to requiring existing authorization holders to provide the required information? Are there other factors we should consider?

7. *Executive Branch agencies' review of corrected information.* We propose to delegate authority to the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers if the new information submitted by an existing authorization holder indicates a material change or discloses new information such that additional investigation is necessary to confirm that the authorization continues to serve the public interest. If the new information leads the Commission to refer the authorization holder to the Executive Branch agencies, we propose to authorize the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers until review is complete and a determination is made. We seek comment on whether to use this process. In the alternative, is there another process we should use?

8. *Use of numbers after submission of updated or new information.* To avoid a disruption of service to customers during review of updated or corrected ownership information, we propose to permit authorization holders to continue to use numbers they obtained pursuant to our current procedures while submitting updated or corrected ownership information to the Bureau, unless and until the Bureau determines otherwise after investigation. We seek comment on this proposal.

### **Disclosure of Initial Service Area in Direct Access Applications**

9. We propose to require new interconnected VoIP applicants to provide, in their direct access applications, a list of the states where they initially intend to request numbering resources. This proposal seeks to create parity with the requirement that other providers show authorization to provide service in the area(s) for which numbering resources are requested, which effectively requires them to identify the states where they initially will request numbers. It also would formalize the existing practice

of the Bureau asking interconnected VoIP applicants to provide a list of the states where they intend to request numbers. We seek comment on this proposal. Would it place an undue burden on interconnected VoIP providers to provide this information? If so, how, given that all other providers are required to provide this information? Is it consistent with promoting symmetrical regulation? We also seek comment on whether requiring this information will help state commissions be better prepared to address interconnected VoIP provider applications pending at the Commission and consequently prepare for new numbering requests in their states. Is there a better way to help state commissions be aware of applications that may affect the demand on numbering resources in their states from new applicants?

### **Ensuring that Indirect Access Serves the Public Interest**

10. We propose to require direct access authorization holders that sell, lease, or otherwise provide telephone numbers obtained via direct access to a voice service provider (an “indirect access recipient”) to: (1) obtain from the indirect access recipient all the same certifications, acknowledgments, and disclosures the indirect access recipient would have had to provide under § 52.15(g)(3), had the recipient applied for direct access to numbering resources itself; (2) obtain from the indirect access recipient all subsequent updates or corrections that would be required of a direct access authorization holder under § 52.15(g)(3); (3) retain a copy of all such certifications, acknowledgments, disclosures, and corrections and updates, to be provided to the Commission upon request; and (4) file with the Commission a list of the voice service providers to which the direct access authorization holder sells, leases, or otherwise provides telephone numbering resources that it obtained directly, and update that list within 30 days of adding any new indirect access recipient. We propose to apply these duties on a prospective basis to existing direct access authorization holders that provide telephone numbering resources to indirect access recipients after the effective date of the proposed new rule. We also propose to require future direct access applicants to certify they will abide by these requirements. We seek comment on these proposals.

11. As noted in the accompanying *Second Report and Order*, a key reason for strengthening the direct access application requirements is to enhance the Commission’s ability to ensure interconnected VoIP providers comply with regulations targeting illegal robocalls and other important requirements, and provide information to help the Commission address potential issues related to foreign ownership. As



also noted above, however, interconnected VoIP providers can obtain numbers indirectly, such as from a competitive LEC that has a direct access authorization. Because interconnected VoIP providers' use of finite telephone numbering resources via indirect means raises the same potential robocalling, access arbitrage, and other public interest issues as use of numbers by providers with direct access, we seek comment on whether it is appropriate for the Commission to apply the same showings as required from interconnected VoIP providers that obtain numbering resources directly. We simultaneously refer questions to the NANC regarding the use and misuse of numbering resources obtained indirectly in our accompanying *Second Report and Order* above. We do so to ensure we have a fulsome record should we decide to take action on this issue in the future.] We believe that by ensuring all interconnected VoIP providers that receive access to numbers, whether directly or indirectly, make the certifications, acknowledgments, and disclosures required in direct access applications, the Commission can improve its ability to protect consumers from entities that evade our robocalling and other rules. In the Access Arbitrage proceeding, we took steps to strengthen our protection of consumers by requiring that an entity with direct access to numbers is responsible for the actions of a provider it subsequently indirectly assigns some or all of its numbers to. The entity receiving numbers directly is responsible (for purposes of Access Stimulation traffic ratio calculations) for call traffic to and from its OCN regardless of whether that entity subsequently indirectly assigns those telephone numbers to other providers. We seek comment on this position.

12. Do commenters agree that this process would accrue the benefits to consumers that we describe? If so, would such benefits outweigh the potential burdens on direct access authorization holders and indirect access recipients? What are the negative consequences of this process for consumers, providers, and competition? Would the proposed requirements create a disincentive for direct access recipients to provide numbers to indirect access recipients? If so, is that good or bad for the public interest and consumers? For example, could this process incentivize indirect access recipients to seek direct access? How large is the secondary market for numbers obtained via direct access? Who are the main customers? How are resold numbers being used?

13. We seek comment on the Commission's role to enforce our rules and obligations pertaining to direct access and numbering. What enforcement actions could the Commission take, or

what penalties could it impose, on a direct access recipient that fails to obtain, retain, or provide the Commission with the necessary certifications, acknowledgments, and disclosures, or that fails to provide and keep current a list of the indirect access recipients to which it provides numbers? Could or should enforcement include revisiting or revoking the direct access authorization holder's authorization? Would the Commission have authority, if an indirect access recipient were suspected or convicted of illegal robocalling or spoofing, to direct the Numbering Administrator to stop providing telephone numbers to the direct access authorization holder, and/or to prohibit the direct access authorization holder from providing numbers to the indirect access recipient? What other consequences, if any, should we consider for the direct access authorization holder when a recipient on its list is found to have violated the Commission's numbering rules or other laws or regulations? We propose to apply the new duties prospectively, but is there any reason why we should not require existing direct access authorization holders to gather, retain, and provide the required information regarding indirect access recipients to which they have already provided numbering resources? If not, how much time should we give existing authorization holders to provide information regarding these indirect access recipients?

14. What other means should we consider to close the gap in our visibility into the use of numbering resources and related activities of indirect access recipients? How would these proposals address a scenario in which an indirect access recipient provides numbers to another indirect access recipient? Do indirect access recipients provide numbers that they obtained indirectly to other providers? How would or should we hold the direct access authorization holders accountable for indirect access recipients of its numbers that are further along this chain of providers?

15. *Filing process.* Regarding the list of indirect access recipients to which a direct access authorization holder sells, leases, or otherwise provides numbers it obtained directly, we propose requiring direct access authorization holders to submit such list and any required updates to the Commission via the "Submit a Non-Docketed Filing" module in Electronic Comment Filing System (ECFS) established for the VoIP Direct Access proceeding (Inbox—52.15 VoIP Numbering Authorization Application) and via e-mail to DAA@fcc.gov, our e-mail alias for interconnected VoIP direct access to numbers applications. We believe that this approach will facilitate informed and timely review by interested members of the public and Commission staff, and we seek comment on this

proposal. Should the lists of indirect access recipients be kept confidential, subject to a protective order, or otherwise shielded from public access?

### **Legal Authority**

16. We tentatively conclude that section 251(e)(1) of the Act, which grants us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,” provides us with authority to adopt our proposals. We seek comment on this conclusion. In the *VoIP Direct Access Order*, 80 FR 66454 (Oct. 29, 2015), the Commission concluded that section 251(e)(1) provided it with authority “to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers.” Consistent with the Commission's well-established reliance on section 251(e) numbering authority with respect to carriers and interconnected VoIP providers, we propose concluding that section 251(e)(1) allows us to further refine our requirements governing direct access to numbering resources. We seek comment on this proposal. Consistent with the *VoIP Direct Access Order*, 80 FR 66454 (Oct. 29, 2015), we also propose concluding that refining our application and post-application direct access requirements would not conflict with Sections 251(b)(2) or 251(e)(2) of the Act. We seek comment on this proposal.

17. We also tentatively conclude that section 6(a) of the TRACED Act provides us with additional authority to adopt our proposal. Section 6(a)(1) directs that: [n]ot later than 180 days after the date of the enactment of this Act, the Commission shall commence a proceeding to determine how Commission policies regarding access to number resources, including number resources for toll free and non-toll free telephone numbers, could be modified, including by establishing registration and compliance obligations, and requirements that providers of voice service given access to number resources take sufficient steps to know the identity of the customers of such providers, to help reduce access to numbers by potential perpetrators of violations of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)). The Commission commenced the proceeding as required by section 6(a)(1) of the TRACED Act in March 2020, and this *Second Further Notice* expands on those inquiries. Section 6(a)(2) of the TRACED Act states that “[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications.” We propose concluding that section 6(a)

of the TRACED Act, by directing us to prescribe regulations implementing policy changes to reduce access to numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt the changes we propose to the direct access process with respect to fighting unlawful robocalls, and we seek comment on this proposal. Should we interpret section 6(a) of the TRACED Act as an independent grant of authority on which we may rely here? Section 6(b) of the TRACED Act authorizes imposition of forfeitures on certain parties found in violation “of a regulation prescribed under subsection (a),” which we tentatively conclude supports our proposal to find that section 6(a) of the TRACED Act is an independent grant of rulemaking authority. We seek comment on this position. Should we codify or adopt any regulations to implement the forfeiture authorization in section 6(b) of the TRACED Act, including as to indirect access recipients, and if so, what regulations should we adopt?

### **Promoting Digital Equity and Inclusion**

18. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Section 1 of the Act provides that the Commission “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission’s relevant legal authority.

### **PROCEDURAL MATTERS**

19. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Second Further Notice*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Second Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

20. *Paperwork Reduction Act*. The *Second Further Notice* also may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## **ORDERING CLAUSES**

21. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Second Report and Order and Second Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### **Initial Regulatory Flexibility Analysis**

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking (Second Further Notice)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Second Further Notice*. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

## **Need for, and Objectives of, the Proposed Rules**

23. In the TRACED Act, Congress directed the Commission to examine whether and how to modify its policies to reduce access to numbers by potential perpetrators of illegal robocalls. Consistent with Congress's direction, the *Second Further Notice* proposes to update our rules regarding direct access to numbers by providers of interconnected VoIP services to help stem the tide of illegal robocalls. Today, widely available VoIP software allows malicious callers to make spoofed calls with minimal experience and cost. Therefore, as we continue to refine our process for allowing VoIP providers direct access to telephone numbers, we must account both for the benefits of competition and the potential risks of allowing bad actors to leverage access to numbers to harm Americans.

24. The Commission first began to allow interconnected VoIP providers to obtain numbers for customers directly from the Numbering Administrator rather than relying on a carrier partner in 2015. Based on our experience since that time, the *Second Further Notice* proposes to adopt clarifications and guardrails to better ensure that VoIP providers that obtain the benefit of direct access to numbers comply with existing legal obligations and do not facilitate illegal robocalls, pose national security risks, or evade or abuse intercarrier compensation requirements.

25. First, we seek comment on a proposal to apply the new application requirements adopted in the *Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements. Second, we seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Third, we seek comment on our proposal to minimize harms that may arise from bad actors that access numbering resources indirectly (i.e., without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.

## **Legal Basis**

26. The proposed action is authorized pursuant to sections 1, 3, 4, 201-205, 227b-1, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, 227b-1, 251, 303(r), and section 6(a) of the TRACED Act, Pub. L. No. 116-105, § 6(a)(1)-(2), 133 Stat. 3274, 3277 (2019).

#### **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

29. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field. Nationwide, for tax

year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

30. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.” This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

31. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs,



Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

32. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

33. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

34. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

35. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

36. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a

small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

37. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 49.8 million. However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count Public Notice, the Commission still relies on the subscriber count threshold established by the 2001 Subscriber Count Public Notice for purposes of this rule. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. The Commission does receive such

information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(e) of the Commission's rules. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

38. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

40. ***Satellite Telecommunications.*** This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

41. ***Local Resellers.*** Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

42. ***Toll Resellers.*** Neither the Commission nor the SBA have developed a small business

size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

43. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently,

using the SBA's small business size standard, most of these providers can be considered small entities.

44. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

45. If adopted, the proposals in the *Second Further Notice* may create new or additional reporting or recordkeeping and/or other compliance obligations for small entities. Specifically, the *Second Further Notice* proposes to apply the new application requirements we adopt in the *Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements. This proposal, if adopted, would impose new reporting and compliance obligations on existing authorization holders. The *Second Further Notice* also proposes requiring direct access applicants to disclose a list of states in which they seek to provide initial service, formalizing the existing practice of the Bureau. Additionally, the *Second Further Notice* seeks comment on a proposal to minimize harms that may arise from bad actors that access numbering resources indirectly (i.e., without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.

46. The Commission anticipates some of the approaches proposed to implement the

requirements in the *Second Report and Order* on existing direct access authorization holders will have minimal or de minimis cost implications because many of these obligations are required to comply with existing Commission regulations. At this time however, the Commission is not in a position to determine whether, if adopted, proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Second Further Notice*.

### **Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

47. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

48. The Commission considered the possibility that burdens may be imposed on interconnected VoIP service providers (small or large) if we adopt rules that propose to strengthen requirements for existing direct access authorization holders. The Commission welcomes comments on any of the issues raised in the *Second Further Notice* that will impact small providers. In particular, the *Second Further Notice* considered and seeks comment on whether requiring existing direct access authorization holders to meet the new requirements of the *Second Report and Order* is necessary, or would be unduly burdensome, and whether the proposed 30-day timeframe for compliance is sufficient. The *Second Further Notice* also requests comment on possible burdens associated with requiring direct access applicants to provide their initial proposed service area and the states where they intend to provide service and whether better options exist. In addition, the *Second Further Notice* seeks comment on the



potential burdens and impact of requiring direct access authorization holders that sell, lease, or otherwise provide telephone numbers to an interconnected VoIP provider to obtain certifications, acknowledgments, and disclosures from them as if they were applying for a direct access authorization.

49. The *Second Further Notice* proposes that authorization holders be allowed to continue to use numbers they obtained prior to submitting updated or corrected ownership information to the Bureau unless the Bureau determines that the authorization must be revoked per the formal revocation procedure we adopt in the *Second Report and Order*. Alternatively, we seek comment on whether this step is necessary to narrow the gap in our oversight ability to reach bad actors with respect to numbering resources, and other factors the Commission should consider to enforce these rules.

50. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *Second Further Notice*, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with any of the proposed requirements to eliminate unlawful robocalls can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *Second Further Notice* and this IRFA.

#### **Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.